

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN STATE POLICE TROOPERS
ASSOCIATION,

UNPUBLISHED
November 6, 2003

Plaintiff-Appellant,

v

STATE OF MICHIGAN and MICHIGAN
DEPARTMENT OF STATE POLICE,

No. 237648
Washtenaw Circuit Court
LC No. 01-000709-CZ

Defendants-Appellees.

Before: Sawyer, P.J., and Hoekstra and Murray, JJ.

PER CURIAM.

Plaintiff appeals from an order of the circuit granting summary disposition to defendants, and denying summary disposition to plaintiff, on plaintiff's complaint seeking declaratory and injunctive relief. We affirm.

Plaintiff is the recognized collective bargaining unit representing all Michigan state police troopers and sergeants. The collective bargaining agreement between plaintiff and the state includes restrictions on defendants' rights to search employees' lockers. Specifically, except in cases of imminent emergency, lockers may be searched only under a validly issued search warrant or by written consent of the employee. In the case bar, the Ypsilanti post commander received a report that seven radios were missing. A search of the common areas of the post and a request to the post's sergeants to locate the radios proved unsuccessful. With a deadline for locating the radios approaching,¹ the post commander consulted with Sgt. Fred Farkas, the MSPTA representative at the post, and they agreed that a search warrant would have to be obtained under the collective bargaining agreement in order for there to be a search of the lockers at the post. Sgt. Farkas prepared and obtained an administrative search warrant. A search was started, but was stopped before conclusion when it was determined that only one of the missing radios was actually assigned to the Ypsilanti post.

¹ The radios were needed for reprogramming and if not submitted by the deadline, the reprogramming could only be done at considerable additional expense.

Thereafter, plaintiff filed the instant complaint seeking declaratory judgment that the State Police do not have the authority to obtain administrative search warrants to search employee lockers, that such warrants are invalid and unenforceable, and to obtain a permanent injunction against such searches. The parties filed cross-motions for summary disposition. The trial court granted summary disposition in favor of defendants, concluding that there were no pending searches which necessitated immediate extraordinary relief and the matter should therefore be left to the arbitration process.

The essential issue in this case is whether the trial court properly deferred this question to the arbitration process. We are satisfied that the trial court correctly determined that this was an issue for the arbitrator, not the court, to resolve. The collective bargaining agreement in this case provided for contract disputes to ultimately be resolved by submission to arbitration. Plaintiff argues, however, that because a constitutional claim is present—the scope of the authority of the state police to obtain administrative search warrants—that this is an issue which is properly before the circuit court rather than an arbitrator. We disagree.

The posture of this case is not one of an individual citizen seeking redress for the violation of his constitutional rights. Nor is this even a case of an individual trooper seeking redress for the violation of his constitutional rights. Were this a case of an individual trooper suing defendants for having engaged in an illegal search of his locker, we might well agree that this case could proceed directly to the circuit court. But that is not the case here. The plaintiff in this case is not an individual trooper alleging the violation of his constitutional rights, but the trooper's union alleging a claim on behalf of its membership. Plaintiff does not represent its individual members for any tort that the member may suffer. Rather, plaintiff represents the interests of its members under the collective bargaining agreement. Thus, ultimately any action brought by plaintiff in its own name is to enforce the rights of its members under the collective bargaining agreement.

In short, this case is an action in contract, not an action in tort. As such, this action is limited to the remedies provided for in the contract. And the contract provides for enforcement through arbitration. Accordingly, plaintiff must submit this dispute to arbitration as provided for in the collective bargaining agreement. See *Watts v Polaczyk*, 242 Mich App 600; 619 NW2d 714 (2000). Then, to the extent the agreement allows for review or enforcement of the collective bargaining agreement in circuit court, plaintiff may bring this dispute to the court for further proceedings.

We are not, as plaintiff suggests, stripping the circuit court of its authority under the constitution. We are not holding that the circuit court could not rule on the constitutional question of the validity of the search or the search warrant in a criminal proceeding against an individual trooper if prosecuted as the result of the items found in his locker during such a search. Nor are we holding that an individual trooper subjected to such a search could not bring an action in tort on his own behalf against defendants without having to submit the matter to arbitration. For that matter, we are not even holding that an individual trooper whose locker is to be searched under a warrant cannot appear in front of the issuing court and move to have the warrant quashed on the basis that it was improperly issued. Rather, we are merely holding that this action is one of a union seeking a determination of its grievance that the employer has violated the collective bargaining agreement. As such, it is subject to the restrictions on remedies provided for in that agreement.

In sum, because the grievance submitted by plaintiff falls within the grievance and arbitration provisions of the collective bargaining agreement, this matter must first be decided within that contractually agreed upon procedure. See *AFSCME Council 25 v Highland Bd of Ed*, 457 Mich 74, 84; 577 NW2d 79 (1998). The arbitrator is empowered to decide both the factual and legal issues that are necessarily raised by the grievance. *DAIIE v Gavin*, 416 Mich 407, 444; 331 NW2d 418 (1982). Thus, the arbitrator may decide all of the issues raised in the grievances filed by the union, followed by the limited judicial review provided by statute and court rule.

Affirmed. Defendant may tax costs.

/s/ David H. Sawyer

/s/ Joel P. Hoekstra

/s/ Christopher M. Murray